

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 549 Student Assessments
SPONSOR(S): Fine and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 906

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Quality Subcommittee		Brink	Duncan
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

Currently, public access to test items under Florida's statewide assessment program is limited to sample questions which are not included in assessments administered under the program. The bill requires the Commissioner of Education, by July 31, 2017, and every 3 years thereafter, to publish on the Florida Department of Education's website "any assessment administered or adopted during the previous school year," thereby providing public access to standardized tests taken by students in Florida. However, due to test item ownership rights and copyright protection, it is unclear which assessments or test items could be released under the bill.

For a discussion of the bill's fiscal impact, see FISCAL COMMENTS, *infra*.

The bill takes effect July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida's statewide assessment program is used to measure the extent to which students have mastered Florida's academic content standards.¹ It includes comprehensive, grade level assessments, end of course (EOC) assessments, and alternate assessments for students with significant cognitive disabilities.² The grade-level ELA and math assessments and Algebra I, Geometry, and Algebra II EOC assessments are referred to as the Florida Standards Assessments (FSA). EOC assessments count as 30 percent of a student's final course grade.³

Results from the assessments are used to calculate school grades and school improvement ratings⁴ and determine student readiness for promotion to 4th grade and high school graduation.⁵ In addition, school districts use student performance data from the assessments in the performance evaluations for instructional personnel and school administrators.⁶

Florida and federal law both require that all public school students annually participate in statewide, standardized ELA and math assessments beginning in the 3rd grade.⁷ Federal law requires that students participate in a standardized science assessment at least once in each of grades 3 through 5, 6 through 9, and 10 through 12.⁸ The requirements for students in Florida are as follows:⁹

- ELA
 - Grades 3-10: annual participation in the FSA-ELA
- Math
 - Grades 3-8: annual participation in the math FSA
 - High school:
 - Algebra I EOC and Geometry assessments
 - (If enrolled) Algebra II EOC assessment
- Science
 - Grades 5 and 8: Statewide Science Assessment
 - High school: Biology I EOC assessment
- Social Studies
 - Middle school: Civics EOC assessment
 - High school: U.S. History EOC assessment

In addition, school districts must participate in national and international comparison assessments, such as the National Assessment of Educational Progress (NAEP),¹⁰ Trends in International

¹ See Florida Department of Education, *ESEA Flexibility Request* (August 21, 2015) at 98, available at <http://www.fldoe.org/core/fileparse.php/5637/urlt/15WaiverRenewalESEA.pdf> [hereinafter referred to as *ESEA Flexibility Request*].

² See s. 1008.22(3), F.S.

³ Sections 1003.4156(1)(c)-(d) and 1003.4282(3), F.S.

⁴ See ss. 1008.34 and 1008.341, F.S.

⁵ See ss. 1008.25(5) and 1003.4282(3)(a) and (b), F.S.

⁶ See s. 1012.34(3)(a)1., F.S.; rules 6A-5.030(2)(a), F.A.C.

⁷ See s. 1008.22(3)(a); 20 U.S.C. s. 6311(b)(2)(v)(I).

⁸ See 20 U.S.C. s. 6311(b)(2)(B)(v)(II).

⁹ See s. 1008.22(3)(a) and (b), F.S.

¹⁰ 20 U.S.C. s. 6311(a)(1)(B). Federal Title I funds are contingent upon a state's participation in the NAEP, which is administered through the National Center for Education Statistics, the primary federal entity for collecting and analyzing state related to education in the U.S. National Center for Education Statistics, *About Us*, <https://nces.ed.gov/about/> (last visited Mar. 17, 2017).

Mathematics and Science Study, Program for International Student Assessment, Progress in International Reading Literacy Study, and International Computer and Information Literacy Study.¹¹

All Students with disabilities, except for students with an approved medical complexity or extraordinary exemption waiver, must participate in the statewide, standardized assessments.¹² Students with significant cognitive disabilities may be eligible to take the Florida Standards Alternate Assessment, which measures student academic performance on the state's academic standards using access points.¹³

In order to reduce costs, the Florida Department of Education (DOE) licenses FSA test items from the test developer, American Institutes for Research, and does not have ownership of or copyright authority over the items.¹⁴ This practice is becoming commonplace among states.¹⁵ Some texts used in state assessment questions are taken from the public domain and can be freely published; however, others are copyrighted texts that the DOE does not have authority to publish.¹⁶

All examination and assessment instruments, including work papers and developmental materials, are confidential and exempt from disclosure under Florida's public records laws.¹⁷ Provisions governing access, maintenance, and destruction of such instruments and materials are prescribed in rule by the State Board of Education.¹⁸

Other assessments authorized in law include:

- the Assessing Comprehension and Communication in English State-to-State for English Language Learners (ACCESS for ELLS) 2.0 for grades 1 through 12, Alternate Access for ELLs for students in grades 1 through 12 who have significant cognitive disabilities, and Kindergarten Access for ELLs for kindergarten students;¹⁹
- the Florida Kindergarten Readiness Screener (FLKRS);²⁰
- the Preliminary SAT/National Merit Scholarship Qualifying Test and Preliminary ACT;²¹
- the Postsecondary Education Readiness Test (PERT);²²
- the Department of Juvenile Justice assessment;²³
- Advanced Placement (AP), International Baccalaureate (IB) and Advanced International Certification of Education (AICE) program testing;²⁴
- Assessments necessary for the attainment of industry certifications;²⁵ and
- the General Educational Development Test.²⁶

The DOE does not own the ACCESS for ELLs 2.0, Alternate ACCESS for ELLs, Kindergarten ACCESS for ELLs, FLKRS, Preliminary SAT/National Merit Scholarship Qualifying Test, Preliminary ACT, PERT,

¹¹ See s. 1008.22(2), F.S.

¹² See ss. 1008.212 and 1008.22(10), F.S.

¹³ See s. 1008.22(3)(c)4., F.S.; rule 6A-1.09430(1), F.A.C.; see also Florida Department of Education, Division of Public Schools and Bureau of Exceptional Education and Student Services, *Statewide Assessment for Students with Disabilities*, Technical Assistance Paper 2010-92 (July 15, 2010). Access points provide students with significant cognitive disabilities access to the Florida Standards at reduced levels of complexity.

¹⁴ Florida Department of Education, Agency Analysis of 2016 House Bill 549, p. 3 (Feb. 7, 2017).

¹⁵ *Id* at 3.

¹⁶ *Id* at 3.

¹⁷ See s. 1008.23 F.S.

¹⁸ See rule 6A-10.042, F.A.C.

¹⁹ See s. 1003.56(3), F.S.

²⁰ Section 1002.69(1), F.S.

²¹ See s. 1007.35, F.S.

²² See s. 1008.30, F.S.

²³ See s. 1003.51(2)(g), F.S.

²⁴ See s. 1007.27, F.S.

²⁵ See ss. 1003.491, 1003.492, 1003.493, and 1003.4935, F.S.

²⁶ See s. 1003.435, F.S.

DJJ Assessment, AP, IB, AICE, GED, or industry certification assessments and does not have copyright authority to release their test items.²⁷

Per general practice, once a test or test item is released, the test items may not be reused in order to maintain assessment validity.²⁸

Effect of Proposed Changes

The bill requires the Commissioner of Education, by July 31, 2017, and every 3 years thereafter, to publish on the DOE's website "any assessment administered or adopted during the previous school year, including, but not limited to, any statewide standardized assessment, end-of-course assessment, alternative assessment, or national or international assessment." By publishing the assessments on the website, the DOE would provide the public access to view assessments administered during the previous school year.

It is unclear what test items the DOE would be able to initially release under the bill due to contractual obligations with test developers, the use of test items that are licensed but not owned by the DOE, the use of assessments owned by other entities, and copyright protection. The DOE "does not anticipate being able to release items until summer 2019 and still maintain enough secure items to continue the statewide assessment program."²⁹

Because test items cannot be repeated for purposes of assessment validity, the DOE would be required to procure additional test items to replace the items it has authority to publish.³⁰ This would require renegotiation of current assessment contracts for the development of test items owned by the DOE. Thereafter, the DOE would be required to purchase sufficient test items to replace assessments that are released every 3 years in accordance with the bill.

B. SECTION DIRECTORY:

Section 1. Requiring that the Commissioner of Education periodically publish on the Department of Education's website any assessment administered or adopted during the previous school year.

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS, *infra*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²⁷ Florida Department of Education, Agency Analysis of 2016 House Bill 549, p. 3 (Feb. 7, 2017).

²⁸ *Id* at 3.

²⁹ *See id* at 3, 4.

³⁰ *See id* at 3.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Florida Department of Education estimates expenditures of approximately \$14 million per year for the development and maintenance of a test item bank large enough to allow the release of state assessments each year. The estimated per-year costs are as follows:

- an increase of \$6 million to the for statewide, standardized assessments and mathematics EOC assessments;
- an increase of \$2 million for the science and social studies EOC assessments and the statewide, standardized assessment;
- an increase of \$3 million for alternate assessments; and
- \$3 million for an annual December Writing Field Test administration to enhance the Writing prompt bank.³¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

³¹ See *id* at 5-6.